



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0432; FRL-9986-18-Region 4]

Air Plan Approval; North Carolina: NO_x Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of a State Implementation Plan (SIP) revision submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ) on June 5, 2017, as supplemented on June 28, 2018. This submittal seeks to revise the State's SIP-approved rules regarding nitrogen oxides (NO_x) emissions from large stationary combustion sources. This action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before [insert date 21 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2018-0432 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Spann can be reached by phone at (404) 562-9029 or via electronic mail at spann.jane@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 18, 2001, North Carolina submitted a rule section regarding the control of NO_x emissions from large stationary combustion sources to EPA for approval into its SIP.¹ The rule section – NCAC 15A 02D .1400 – contained Rules .1401 - “Definitions”; .1403 - “Compliance Schedules”; .1413 - “Sources Not Otherwise Listed in This Section”; .1414 - “Tune-up Requirements”; and .1423 - “Large Internal Combustion Engines” as well as other rules not related to today’s proposed action. The submittal also included a rule entitled “.1406 Utility Boilers (Repealed)” with no regulatory text. EPA approved the September 18, 2001, SIP revision on December 27, 2002, with the exception of Rule .1406 and the addition of Rules .1413, and .1414, among others. EPA did not act on Rule .1406 because the rule contained no

¹ See Rule .1402 - “Applicability” and the definition of “source” in Rule .1401 for the scope of this rule section.

regulatory text and because Rule .1406 was not in the SIP, thus there was nothing to repeal. See 67 FR 78987 for further information.

On August 14, 2002, North Carolina submitted a SIP revision to EPA containing changes to its Section 1400 NO_x rules. The submission included changes to Rule .1401 - “Definitions”; .1403 - “Compliance Schedules”; .1413 - “Sources Not Otherwise Listed in This Section”; .1414 - “Tune-up Requirements”; and .1423 - “Large Internal Combustion Engines” as well as changes to other rules not related to today’s proposed action. The submittal again included a rule entitled “.1406 Utility Boilers (Repealed)” with no regulatory text. North Carolina took these rule changes to hearing on May 21, 2001, and June 5, 2001. EPA did not act on the August 14, 2002, submittal.

On June 5, 2017, North Carolina withdrew its August 14, 2002, SIP submittal and resubmitted the changes to Rules .1401, .1403, .1413, .1414, and .1423 contained in the 2002 submittal along with the repeal of Rule .1406. The June 5, 2017, submittal relies on the hearing record associated with the August 14, 2002, submittal because the rule text is identical. On June 28, 2018, North Carolina supplemented its June 5, 2017, submittal to acknowledge that Rules .1413 and .1414 are not in the SIP.

II. Analysis of North Carolina’s June 5, 2017, Submittal and June 28, 2018, Supplement

EPA has reviewed the June 5, 2017, submittal, as supplemented on June 28, 2018, and proposes to act on Rules .1401, .1413, and .1414 and not to act on Rules .1403, .1406, and .1423, as discussed below.²

a. Rule .1401 - “Definitions”

North Carolina modified Rule .1401 to clarify which definitions outside of the rule apply to Section .1400, including definitions from the Code of Federal Regulations (CFR) as discussed below; add a definition of “combustion turbine”; revise several existing definitions; and renumber the paragraphs within the rule. The State added the definition of “combustion turbine” from 40 CFR 96.2 – “an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine” – for consistency with the federal rule. The revised definitions are discussed below.

North Carolina modified the definition of “reasonable effort” to replace the term “optimization of” with “utilization” in the phrase “‘Reasonable effort’ means the proper installation of technology designed to meet the requirements of Rule .1407, .1408, or .1409 of this Section and the optimization of this technology, according to the manufacturer’s recommendations or other similar guidance for not less than six months, in an effort to meet the

² On June 5, 2017, NCDAQ submitted a SIP revision addressing Rules .1407 - “Boilers and Indirect-Fired Process Heaters” and .1408 - “Stationary Combustion Turbines” that is separate from the SIP revision that EPA is proposing to act on today. On August 14, 2002, and again on November 19, 2008, NCDAQ submitted amendments to Rules .1407 and .1408 along with many other rule amendments. NCDAQ’s intention, as outlined in its June 5, 2017, SIP submittal for Rules .1407 and .1408, was to withdraw the November 19, 2008, submittal related to these rules. However, EPA already approved the portion of the November 19, 2008, submittal related to Rules .1407 and .1408 on May 9, 2013. *See* 78 FR 27065.

applicable limitation for a source.” Given the limited applicability of the provision, the continued requirement to follow manufacturers’ recommendations or other similar guidance, the fact that it was state effective in 2002, and the lack of nonattainment areas in the State for any criteria pollutant, EPA does not believe that incorporating the revision into the SIP will interfere with any applicable requirement regarding attainment and reasonable further progress or any other applicable CAA requirement.

Under the SIP-approved definitions of “emergency generator” and “emergency use internal combustion engines,” subject internal combustion engines are included only during the loss of primary power at the facility that is beyond the control of the owner or operator of the facility or during maintenance “when necessary to protect the environment.” In its June 5, 2017, SIP revision, North Carolina replaced the phrase “when necessary to protect the environment” with the phrase “when maintenance is being performed on the power supply to equipment that is essential in protecting the environment or to such equipment itself.” EPA believes that this is a clarifying change and therefore does not relax the rule.

The State made a number of additional clarifying changes. North Carolina reworded the definition of “fossil fuel fired” to clarify that the term applies to certain sources where fossil fuel is combusted either alone or in combustion with other fuel. The definition of “ozone season” is revised in the submittal to clarify that it begins on May 31 and ends on September 30 for 2004 and begins on May 1 and ends on September 30 for all other years. The definitions of “seasonal energy input” and “seasonal energy output” are also revised to clarify that they cover the period beginning on May 1 and ending on September 30. In addition, the State clarified that the definitions in 15A NCAC 2D .0101 from the general definitions and references section of Chapter 2D apply to Section 1400 (unless there is a conflict, in which case the definitions in Rule

.1401 control) as well as N.C.G.S. 143-121 and 143-213, the definitions in the governing state air statute. The State also added paragraph (b) stating that whenever reference is made to the CFR, the definitions in the CFR apply unless specifically stated otherwise. These clarifying changes do not alter the meaning of these definitions.

b. Section .1403 - “Compliance Schedules”

The version of Rule .1403 included in the June 5, 2017, SIP revision was state effective in 2002. However, on January 31, 2008, the State submitted a SIP revision to EPA containing a version of the rule that was state effective on July 1, 2007. EPA approved the portion of that SIP revision regarding Rule .1403 and incorporated the July 1, 2007, version of the rule into the SIP on May 9, 2013 (78 FR 27065). Because the later version of the rule superseded the July 15, 2002, version contained in the June 5, 2017, SIP revision, EPA is not taking action on the portion of the submittal regarding Rule .1403.

c. Rule .1406 - “Utility Boilers (Repealed)”

The June 5, 2017, SIP revision includes a rule entitled “.1406 Utility Boilers (Repealed)” with no regulatory text. EPA is not proposing to act on Rule .1406 because the rule contains no regulatory text and because Rule .1406 is not in the SIP.

d. Rule .1413 - “Sources Not Otherwise Listed in This Section”

Rule .1413 requires subject sources of NO_x other than boilers, indirect-fired process heaters, stationary combustion turbines, and stationary internal combustion engines at facilities with a potential to emit of 100 tons per year or more of NO_x or 560 pounds per calendar day or more from May 1 through September 30 to apply Reasonably Available Control Technology (RACT). The rule also requires owners or operators of such sources to submit certain information to the State, including a proposed limitation for consideration as RACT, and requires

the Director to approve the proposed limitation if he finds that the source has submitted all of the necessary information, the source is covered under the rule, and that the proposed limitation is RACT for the source.

The June 5, 2017, SIP revision identified changes to Rule .1413 in a redline/strikeout format; however, EPA has never incorporated Rule .1413 into the SIP. Therefore, on June 28, 2018, North Carolina supplemented its submittal with a revised redline/strikeout version of the rule acknowledging that none of the rule text is in the SIP. EPA is now proposing to incorporate Rule .1413 into the SIP because the rule imposes NO_x emissions controls on sources in the State and is thus a SIP strengthening measure.

e. Rule .1414 - “Tune-up Requirements”

Rule .1414 provides tune-up requirements for certain boilers, indirect-fired process heaters, and stationary internal combustion engines. Owners and operators with equipment subject to the rule must perform tune-ups at least annually in accordance with manufacturers’ recommendations and maintain records of the tune-ups.

The June 5, 2017, SIP revision identified changes to Rule .1414 in a redline/strikeout format; however, EPA has never incorporated Rule .1414 into the SIP. Therefore, on June 28, 2018, North Carolina supplemented its submittal with a revised redline/strikeout version of the rule acknowledging that none of the rule text is in the SIP. EPA is now proposing to incorporate Rule .1414 into the SIP because the rule imposes maintenance requirements on certain NO_x emitting equipment in the State to ensure proper operation and is thus a SIP strengthening measure.

f. Rule .1423 - “Large Internal Combustion Engines”

EPA is not proposing to act on the changes to Rule .1423 at this time.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference North Carolina regulations 15 NCAC 02D .1401- “Definitions,” modified to clarify which definitions outside of the rule apply to Section .1400, including definitions from the CFR, add a definition for “combustion turbine,” modify the definition of “reasonable effort,” “emergency generator,” “emergency use internal combustion engines,” “fossil fuel fired,” “ozone season,” “seasonal energy input” and “seasonal energy output,” and renumber the paragraphs within the rule, state effective on July 15, 2002; .1413 - “Sources Not Otherwise Listed in This Section,” which includes rules for NO_x sources not otherwise listed in section .1400, state effective on July 18, 2002; and .1414 - “Tune-Up Requirements,” which includes tune-up requirements for certain boilers, indirect-fired process heaters and stationary internal combustion engines, state effective on July 18, 2002. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve the aforementioned changes to the North Carolina SIP. EPA has evaluated the relevant portions of North Carolina’s June 5, 2017, SIP revision, as supplemented on June 28, 2018, and is proposing to determine that they meet the applicable requirements of the CAA and its implementing regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 25, 2018.

Onis “Trey” Glenn, III
Regional Administrator,
Region 4.

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